

California Environmental Protection Agency

RESPONSES TO MAJOR COMMENTS ON THE AUGUST 2004 DRAFT ENVIRONMENTAL JUSTICE ACTION PLAN

October 2004

Introduction

The activities in the California Environmental Protection Agency's (Cal/EPA or Agency) Environmental Justice (EJ) Action Plan provides opportunities for the Agency and our boards, departments and office (BDOs) to explore concepts and develop tools in moving forward on specific priorities – precautionary approaches, cumulative impacts, public participation, and community capacity-building.

On August 13, 2004, Cal/EPA released a draft EJ Action Plan for a 30-day public comment period. The comments received were reviewed by Cal/EPA and incorporated, as appropriate, into the October 2004 EJ Action Plan. This EJ Action Plan reflects four organizational changes Cal/EPA made: three to focus and streamline the BDOs' implementation of planned activities; and the fourth to simplify the structure of the EJ Action Plan document, itself.

- We directed the focus of the precautionary approaches, cumulative impacts, and public participation efforts toward the four EJ pilot projects, making the pilot projects the primary mechanisms for implementing all planned activities.
- We streamlined the unwieldy process in the August 2004 draft that would have created seven formal workgroups into one dynamic team, more adaptable to the needs and challenges of implementing the pilot projects, and more approachable and efficient in working with EJ stakeholders.
- We organized activities into five implementation phases, with the completion date for all activities still projected to be in 2006, but ensuring a more methodical and systematic approach toward achieving the EJ Action Plan's objectives.
- Finally, Cal/EPA consolidated all discussions regarding implementation into one section (Section 3, titled "Implementation") in the EJ Action Plan document; this one section discusses the pilot projects, organization and assignments, public participation, implementation phases, roles of the Interagency Working Group on Environmental Justice (IWG) and Advisory Committee, and important considerations.

Additionally, it was clear from the comments received that Cal/EPA needed to streamline and clarify the "Milestones" section in the August 2004 draft. Thus, in the October 2004 version, we focused the discussion only on the first two implementation phases, with activities that are expected to be conducted from October 2004 through July 2005. Specific timeframes for the remaining phases will be developed as Cal/EPA proceeds further in our implementation efforts and will be incorporated into future updates of the EJ Action Plan.

The activities in the EJ Action Plan are starting points that will take Cal/EPA into new territory on complex EJ issues, developing and testing new concepts and approaches. Thus, the EJ Action Plan is an evolving document that will be updated by Cal/EPA during the course of its implementation, in response to new, significant and relevant information, opportunities, needs, or constraints.

Responses to Major Comments on the EJ Action Plan

Below are Cal/EPA's responses to major comments received on the August 2004 draft EJ Action Plan. Cal/EPA received written comments from the following organizations:

- California Council for Environmental and Economic Balance
- California Environmental Rights Alliance
- Center for Community Action and Environmental Justice¹
- Communities for a Better Environment¹
- Environmental Health Coalition¹
- People for Children's Health & Environmental Justice
- People Organizing to Demand Environmental & Economic Rights¹
- Silicon Valley Toxics Coalition¹
- Western Plant Health Association

For the purpose of brevity, we have selected the more significant or representative comments from each reviewer for responses. Comments appear in quotation marks where they are directly quoted from the submission, and appear in italics where they are paraphrased. The complete texts of written comments submitted on the August 2004 draft Action Plan are available on Cal/EPA's EJ website at www.calepa.ca.gov/EnvJustice or by request to:

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1. Comments from the California Council for Environmental and Economic Balance (CCEEB)

Comment 1: Regarding the precautionary approaches effort, "...[T]he specific actions appear to be reasonable – assuming that Cal/EPA is not intending this effort to be implementation of the precautionary principle. (If that assumption is incorrect, Cal/EPA should be straightforward about its intention and engage a dialogue on that issue.)"

¹ The Center for Community Action and Environmental Justice, Communities for a Better Environment, Environmental Health Coalition, People Organizing to Demand Environmental & Economic Rights, and Silicon Valley Toxics Coalition submitted joint comments on the August 2004 draft EJ action plan.

Response 1: Cal/EPA intends for this effort to explore the concept of “precautionary approaches.” We appreciate that there is not an agreed-upon definition for the term “precautionary approaches” – nor, arguably, is there one for “precautionary principle.” As we embark on this effort, Cal/EPA’s notion of “precautionary approaches” is guided solely by our belief that many programs currently implemented by Cal/EPA and our BDOs are precautionary in nature. We recognize the importance of establishing an objective **working** definition for “precautionary approaches” so that all stakeholders involved would share a common base of understanding as we set forth on exploring this complex concept. Thus, we have added the following objective to Section 2.1 (on page 4 of the October 2004 EJ Action Plan) as the first activity for the precautionary approaches effort: “Develop a common, objective working definition for precautionary approaches.”

This initial working definition will guide Cal/EPA’s efforts to inventory where/how precautionary approaches are used, or could be used, in our environmental programs and, where additional precaution is warranted, to identify reasonable and cost-effective approaches that will be tested in the Children’s Environmental Risk Reduction Plans (ChERRPs) for our pilot projects. As we conduct these efforts, and as we evaluate the pilot projects, it may become necessary to revise the working definition based on new information or lessons learned.

Comment 2: “CCEEB’s most significant concern regarding the Draft Plan relates to ... the development of guidance and implementation options on multimedia cumulative impacts.” “CCEEB’s concern ... is that it is premature for Cal/EPA to be developing guidance and implementation options related to multi-media cumulative impacts.” “[M]oving ahead with a multi-media program is premature when key cumulative impacts tools are not yet developed or peer-reviewed for individual environmental media and related implementation criteria have not been developed and peer-reviewed for the individual environmental media. For example, the Air Resources Board [ARB] is currently developing tools for assessing cumulative risk due to toxic air pollutants. How would you conduct a combined (multi-media) cumulative impacts analysis for air and water when you are still working on how to assess and evaluate air toxics risk on a cumulative basis?”

Response 2: We acknowledge that this field is relatively early in development, and steps can be taken to improve how cumulative impacts are considered by Cal/EPA and our BDOs. That, in and of itself, provides a reason to proceed with the activities in the EJ Action Plan on multi-media cumulative impacts, which include: inventorying current science-based studies, protocols, and tools; and identifying where gaps exist in current methodologies (*i.e.*, determining what science-based studies, protocols or tools are needed, but are not yet available or used, to evaluate multi-media cumulative impacts). We recognize that this effort, in many ways, is a starting point and that these activities will take Cal/EPA into new territory; however, we do not believe that it is necessary to know how a specific type of assessment will be conducted for us to start exploring the concept of multi-media cumulative impacts and conducting the planned activities. Cal/EPA acknowledges CCEEB’s concerns and agrees that cumulative impacts efforts should be conducted with a strong scientific foundation. We will proceed methodically and thoughtfully on this matter.

Comment 3: “CCEEB suggests that the words ‘multi-media’ be deleted from the Workgroup’s name, and that the Workgroup’s action items, with the exception of initial discussions regarding the definition ... relate to individual environmental media (*e.g.*, air).”

Response 3: We believe that cumulative impact guidance and assessment should be approached by considering all of the various media through which individuals and communities may be impacted. For this reason we believe “multi-media” is appropriately included in the name of this effort. We recognize that there are challenges in pursuing this approach. However, multi-media approaches to risk assessment are not new to Cal/EPA; several risk assessment activities currently conducted by our BDOs already address multi-media or multi-pathway assessment. Examples include the implementation of the Air Toxics “Hot Spots” Information and Assessment Act of 1987 (Health and Safety Code Section 44360) and Guidance for Assessing Exposures and Health Risks at Existing and Proposed School Sites (Health and Safety Code Section 901(f)).

Comment 4: “CCEEB suggests that the Workgroup members share information regarding where each BDO is relative to having science-based and peer-reviewed tools for assessing cumulative impacts within its programs (*e.g.*, ARB for the air quality programs) and equitable, science-based and peer-reviewed implementation criteria for use of those tools.”

Response 4: We agree that staff working on the cumulative impacts effort should collect all relevant and current information concerning cumulative impact assessment tools used by Cal/EPA’s BDOs. This information will be included in staff’s findings, which will be shared with stakeholders and reported to the IWG.

Comment 5: “...CCEEB recognizes the desire by some groups for Cal/EPA to move immediately to address multi-media cumulative impacts. However, doing so in a simplistic manner is not likely to result in an effective, reasonable and equitable program. Given the rather extreme nature of the measures that some groups have suggested for addressing unusually high cumulative impacts (*e.g.*, denial of permits, relocation of businesses), it is critical that Cal/EPA and the BDOs work through this important area in a rational fashion. In the meantime, Cal/EPA programs for each media are resulting in improved environmental quality and reduced cumulative risk for communities.”

Response 5: We acknowledge these concerns and agree that cumulative impacts efforts should be conducted with a strong scientific foundation. Cal/EPA will proceed methodically and thoughtfully on this matter. We are confident that the staff involved will not only recognize the complexity of the cumulative impacts issue, but will strive to develop an effective, reasonable, and equitable work product. We agree with the statement that media-specific programs have been successful in improving environmental quality and reducing cumulative risks for communities in California; however, we still believe that a systematic examination of how Cal/EPA deals with multi-media cumulative impacts will lead to further improvements in the various BDOs’ assessments and decision-making processes.

Comment 6: “The first bullet in Section 2.2 proposes that the [Multi-media Cumulative Impacts] Workgroup develop a ‘common, objective definition for multi-media cumulative impacts.’ CCEEB recognizes that the development of an appropriate definition will be a key part of Cal/EPA’s and the BDOs’ work on environmental justice. It may be appropriate for this Workgroup to have initial discussions regarding how ‘cumulative impacts’ should be defined on a multi-media basis. However, it would be premature for the Workgroup or Cal/EPA to finalize such a definition before the cumulative impacts tools and criteria have been developed for the individual media. Those tools and criteria are likely to affect how a definition for multi-media cumulative impacts should be written (*i.e.*, you need to know what the parts of the equation are before you write the equation).”

Response 6: It is reasonable to expect that issues that might help to improve a “common, objective definition” may be revealed in the course of carrying out the other action items under this objective, as well as those for other objectives and the pilot projects. Thus, we have revised this task to read: “Develop a common, objective working definition for multi-media cumulative impacts.” This reflects Cal/EPA’s intent that the definition developed be a dynamic one that will be changed as appropriate as we proceed through the activities of the EJ Action Plan.

Comment 7: “In the second bullet in Section 2.2, Cal/EPA is proposing that the Workgroup inventory ‘current cumulative impacts studies, protocols, and tools and identify needs to be addressed.’ CCEEB supports inclusion of this bullet. We suggest that Cal/EPA add to this part of the Action Plan the step of determining whether or not the inventoried tools have been appropriately peer-reviewed. We note that at Page 25 of its report, the Advisory Committee recommends that Cal/EPA: ‘Develop, through a public process, peer-reviewed tools to assess cumulative impacts, and equitable scientifically based criteria for using these tools, especially as they be used to further the goals of environmental justice.’”

Response 7: We acknowledge that the peer review status of the tools identified in the inventory phase will likely be a good indicator of their relative merits. Peer review considerations will be addressed prior to the formal adoption of the guidance on cumulative impacts. Should the guidance, or any part of the guidance (including inventoried tools), be used for proposed rulemaking by a Cal/EPA BDO, then its scientific basis will be subject to the external scientific peer review requirements of the California Health and Safety Code, Section 57004(b).

Comment 8: “First, we urge Cal/EPA and the BDOs to think through what part of public participation guidelines should be the same from BDO to BDO (*i.e.* “common”) and which parts of the guidelines should be different from BDO to BDO. For example, most ARB programs (*e.g.*, an automobile standards regulation) apply statewide. However, for another BDO, such as the Integrated Waste Management Board [IWMB], the BDO may take some actions that apply statewide but may also take some actions that affect only one local area. The public participation steps for these different types of actions would probably need to be different.”

Response 8: Each BDO conducts its public participation activities under differing statutory and regulatory mandates. These mandates determine the time and format for public hearings and other outreach activities. Cal/EPA intends to identify commonalities in this process, and determine where further common practices make sense. Recommendations that establish a “floor” or minimum level of public participation, and options for a higher level of public participation (based on the level of public interest in a project) will be considered.

Comment 9: “Second, as an example, we note that ARB has recently developed public participation guidelines for use by the public. The ARB EJ Stakeholders Group reached consensus on that document – which ARB staff prepared pursuant to ARB’s EJ Action Plan. We hope that this Cal/EPA effort will focus on where there are gaps in the public participation process and not ‘reinvent the wheel’ where BDOs already have effective work products in place.”

Response 9: We agree that some practices and guidance already exist within each BDO. Our goal is to identify an appropriate level of public participation for each BDO.

Comment 10: “CCEEB suggests that Cal/EPA may want to simply refer to ‘complaint resolution protocols’ as opposed to ‘EJ complaint resolution protocols.’ We note that ARB working with the ARB EJ Stakeholders Group developed a ‘Complaint Resolution Protocol.’ Although the EJ Stakeholders worked on that document, the scope of the document was air pollution complaints (as opposed to ‘EJ complaints.’) The expectation is that the ARB Complaint Resolution Protocol will be valuable because it makes the complaint resolution process transparent to ARB staff, the air districts, communities and businesses.”

Response 10: Cal/EPA intends to specifically identify a process whereby complaints related to environmental justice can be resolved. We agree that existing processes or models may already be in place within Cal/EPA’s BDOs. However, we believe that it is appropriate to identify an environmental justice focus within complaint resolution protocols.

Comment 11: “...[W]e expect that Cal/EPA is suggesting that the BDOs through the OPP [Outreach and Public Participation] Workgroup process, develop protocols similar to the one that ARB has developed – but tailored to the particular BDO’s programs (which would be appropriate). We suggest that ARB’s recently developed protocol should satisfy this action item for ARB, and a comment or footnote should be added to the Action Plan to that effect. We question whether OEHHA [Office of Environmental Health Hazard Assessment] will need such a protocol.”

Response 11: Cal/EPA intends to develop a process to deal specifically with environmental justice complaints, as well as the complaints that come from all communities (including those where environmental justice is an issue.) We agree that portions of the process must be BDO-specific. Because each BDO receives complaints, each should develop a formal process. We agree that the ARB’s complaint resolution is an excellent prototype, and it will be central to the discussions regarding an agency-wide process.

Comment 12: “Cal/EPA is suggesting the formation of Local Advisory Groups (“LAGs”) – one for each of the four pilot projects. Having LAGs makes sense, but it will be important to have an appropriate process for the selection of LAG members. At Page 10, Cal/EPA is proposing that Subcommittees of the Cal/EPA Advisory Committee on Environmental Justice be formed to organize and lead the four LAGs. CCEEB suggests that Cal/EPA needs to think through whether using Subcommittees of the Advisory Committee to organize and lead the LAGs is the best approach. Although input from Advisory Committee members would be helpful as to LAG makeup or the process for formation of the LAGs, we expect that input from others that have familiarity with the subject of the pilot project and/or particular local area and issues would also be important.”

Response 12: Cal/EPA intends to establish LAGs through an open process, with input from Advisory Committee members and other stakeholders. We anticipate that the membership of the LAGs will consist of those most affected by the proposal (typically this would be local representation), and those with a level of expertise and commitment to the subject of the pilot project (this may consist of policy, technical or scientific experts who can assist on developing advice on behalf of the affected community).

Comment 13: “The Draft Plan is silent as to who would lead a LAG and the composition of the LAGs. CCEEB suggests that Cal/EPA amend the Draft Plan to:

- A) specify that the lead person for the Board or Department that is leading the particular pilot project will chair the LAG for that project; and
- B) specify that the makeup of the LAGs will be balanced and will include representatives from the relevant local or regional environmental agency (*e.g.* the air district for the air quality pilot project) and the business community in addition to community representatives.”

Response 13: With regards to the first point, it should be noted that the LAGs are advisory bodies that will make recommendations and provide input to the lead agencies conducting the pilot projects. Thus, we feel that each LAG should organize itself in a way that best allows for this to occur. The lead BDO for that pilot project will provide a staff member to provide information to the LAG. The Department of Toxic Substances Control [DTSC] will provide its public participation program to assist in the development of the LAG and to facilitate communication between the LAG and the lead BDO staff, as necessary.

We agree with the second point. To be effective, each LAG should provide for a diversity of viewpoints from those most affected by that specific pilot project. A similar model is contained in the California Health and Safety Code, Section 25358.7.1(a), which applies to the cleanup of hazardous waste sites. We have included language in Section 3.3 (page 7 of the October 2004 EJ Action Plan) to address this comment.

Comment 14: “Depending on the content of the Children’s Environmental Risk Reduction Plans (ChERRPs), there may be a need for scientific peer review of the scientific foundation for a ChERRP. Cal/EPA should include a step in the ChERRP process for a determination of whether peer review is needed.”

Response 14: Should a ChERRP include proposed regulatory changes by a Cal/EPA BDO, then the scientific basis for that rulemaking will be subject to the external scientific peer review requirements of the California Health and Safety Code, Section 57004(b). Cal/EPA will comply with all legal and administrative requirements (e.g., external scientific peer review, public notification and comment, and approval by the Office of Administrative Law) before implementing any recommendations involving regulatory changes.

Comment 15: “CCEEB agrees that it is important to conduct such workshops early in the process. We suggest that it is also important to conduct workshops during the process. We suggest the following edit:

Workshops will be conducted early in the process, to solicit relevant information, data, and suggestions for the direction and scope of these efforts, and during the process.”

Response 15: Cal/EPA agrees that stakeholder input throughout the process is critical for the activities in the EJ Action Plan. In Section 3.3 (page 7 of the October 2004 EJ Action Plan), we outline tools that will be used to ensure continued public participation. In addition to meetings and workshops, Cal/EPA will establish a Stakeholders Forum, using the Internet as the primary interface for staffs and stakeholders to efficiently exchange information and ideas.

Comment 16: “The currently proposed milestones appear to follow an aggressive schedule. We urge Cal/EPA to ensure that key areas (e.g., cumulative impacts methodologies) are given appropriate time during implementation of the plan, and in the ‘next steps’ that follow, for technical reviews, public participation, peer review and in-depth discussions regarding policy issues.” “... [T]he milestone section could be clearer as to the estimated time for when the pilot projects/Children’s Environmental Risk Reduction Plans... would be completed. (It appears that completion is targeted for fall of 2006, but that is not clear.)”

Response 16: Cal/EPA agrees that activities in the EJ Action Plan, especially those concerning cumulative impacts, must be conducted thoughtfully. In Section 3.4 (page 8 of the October 2004 EJ Action Plan), we have organized the planned EJ activities into five implementation phases, ensuring a more methodical and systematic approach to ensure that key areas and complex issues are addressed appropriately. At this time, we expect the ChERRPs to be conducted and completed in 2006; however, timeframes are subject to change depending on the progress and outcome of staff’s efforts, as well as other factors.

In the revised “Milestones” section (page 10), we acknowledge that it is difficult to predict with any degree of certainty the timeframe for specific milestones. Thus, we are only focusing on the near term activities in Phases 1 and 2. Specific timeframes for the remaining phases will be developed as Cal/EPA proceeds further in our implementation efforts and will be incorporated into future updates of the EJ Action Plan.

Comment 17: “... [W]e suggest that Cal/EPA prepare a written report on the pilot projects/ChERRPs. This will provide information to stakeholders who are not able to participate in each of, or all of, the pilot projects. We suggest that Section 5.5 address the timing for issuance of this written report.”

Response 17: Cal/EPA agrees that a written report on the pilot projects and ChERRPs will provide valuable information. We have added this activity to Sections 3.1 and 3.4 of the October 2004 EJ Action Plan. In Section 3.4 (page 8), we project that staff will complete the report in late-2006.

Comment 18: “In the last paragraph on Page 3, the Draft Plan references the assessment of different ‘EJ scenarios.’ We do not think that this term has been defined elsewhere, and it is vague. We suggest that Cal/EPA clarify what is intended here. For example, if this term is intended to mean situations where a community is exposed to unusually higher levels of exposure to pollutants or health risk than other communities in a region (an appropriate focus), that could be said more explicitly.”

Response 18: Cal/EPA has revised this sentence to reflect our intent to assess different “environmental scenarios” as reflected in the four pilot projects to be conducted, focusing primarily on air emissions, pesticide usage, site remediation issues, and water resources management, respectively.

2. Comments from the California Environmental Rights Alliance (CERA)

Comment 1: “...[W]e suggest revising the EJ Action Plan to include an explanation that the consideration of precaution relates to decision-making in the absence of unambiguous evidence about potential harm of a proposed activity. As currently drafted, the EJ Action Plan simply states that Cal/EPA will consider precautionary approaches without explaining the issues involved.”

Response 1: Cal/EPA intends for this effort to explore the concept of “precautionary approaches” in its many facets, including how it relates to decision-making processes and the issues involved in its application to regulatory decisions. As we embark on this effort, Cal/EPA’s notion of “precaution” is guided solely by our belief that many programs currently implemented by Cal/EPA and our BDOs are precautionary in nature. We recognizes the importance of establishing an objective **working** definition for “precautionary approaches” so that all stakeholders involved would share a common base of understanding as we set forth on exploring this complex concept. Thus, we have added the following objective to Section 2.1 (on page 4 of the October 2004 EJ Action Plan) as the first activity for the precautionary approaches effort: “Develop a common, objective working definition for precautionary approaches.”

Comment 2: “... [W]e strongly recommend that all Cal/EPA staff engaged in this pursuit [addressing the issue of precautionary approaches in decision-making] be required to read at least two books – *Protecting Public Health and the Environment*, edited by Carolyn Raffensperger and Joel Tickner, and *Making Better Environmental Decisions* by Mary O’Brien. Cal/EPA should use the ideas, analyses, and recommendations in these two publications as the foundation upon which to construct guidance on precautionary approaches.”

Response 2: Cal/EPA will make these publications available to the staff involved in the precautionary approaches effort, and they will be part of the body of information and references to be considered by our staff in developing the guidance. However, it is premature for us to conclude at this time that this information will serve as the foundation for the Cal/EPA guidance on precautionary approaches.

Comment 3: “We caution Cal/EPA about its proposal to “[i]dentify reasonable *cost-effective* approaches that could be used to prevent or minimize adverse environmental impacts.” (EJ Action Plan §2.1, emphasis added) We request that Cal/EPA strike the term “cost-effective” from the sentence.” “While the consideration of costs may play some role in precautionary decision-making, it should only do so with a frank and open acknowledgement of the inherent limitations involved.”

Response 3: Cal/EPA acknowledges that there are inherent limitations involved in any consideration of costs and benefits, especially as they relate to the environment and human health. This activity is not expected to be conducted until Phase 3 (projected to be in late-2005) in Cal/EPA’s implementation process. At that time, staff will solicit stakeholder input on and consider the factors involved in cost considerations. We are basing our objective regarding “reasonable cost-effective approaches” on the recommendation from the Advisory Committee’s Final Report that Cal/EPA “identify, through a public process, a set of reasonable, cost-effective, achieved-in-practice approaches that could be used to prevent or minimize adverse environmental impacts...” (page 21, last bullet of the Advisory Committee’s report).

Comment 4: “The Cal/EPA EJ Action Plan should ... be improved by clarifying that the consideration of cumulative impacts will not be limited to an approach based solely upon risk assessment. Cal/EPA should specify that the term ‘cumulative impacts’ is to be interpreted in a broad and inclusive manner. Cumulative environmental impacts should be viewed as referring to environmental hazards, both potential (*e.g.*, the storage of toxic chemicals) and actual (*e.g.*, the emission of toxic air contaminants), exposures to pollutants, public health risks (*e.g.*, as calculated in risk assessments), and adverse disease outcomes (*e.g.*, cancer)... The full continuum of hazards, exposures, risks, and disease outcomes must be considered. Cal/EPA should establish a clear mandate for an inclusionary approach to the assessment and reduction of cumulative impacts.”

Response 4: Workshops have been scheduled as part of the implementation of the EJ Action Plan to acquire input from stakeholders regarding the interpretation and scope of the term “cumulative impacts.” This term was chosen because it does not strictly limit the assessment of effects to health risks.

Comment 5: “...[W]e request that Cal/EPA revise Section 3.1 of the draft EJ Action Plan: ‘The projects will focus on environmental *hazards*, *exposures*, ~~and~~ *risk factors*, *and disease outcomes* that impact children’s health.’ (additions in italics, deletions in strikeout) We also ask that Cal/EPA inform staff that the Children’s Environmental Risk Reduction Plan will be undertaken in a manner that assesses, prevents and reduces environmental hazards, exposures, risks, and diseases, not just ‘risk’ as narrowly defined in standard risk assessments.”

Response 5: Cal/EPA intends for the pilot projects and ChERRPs to address children's environmental "risk" in the broad sense of the term, which would include factors such as emissions/discharge, exposure, and health risk. As our staff work on this activity, Cal/EPA will seek stakeholder input in further defining the parameters for the ChERRPs.

Comment 6: "With regard to public participation and community capacity building, we encourage Cal/EPA to establish guidelines that include both the minimum requirements for public participation practices and optional measures that could provide for enhanced participation opportunities."

Response 6: The overall purpose of the "Public Participation and Community Capacity Building" effort is to develop common approaches/guidelines and enable communities to better participate in the decision-making processes of Cal/EPA and our BDOs. The effort will include a review of existing outreach mandates and practices, with input from the public, and development of recommendations for consideration by the IWG, with input from the Advisory Committee. Recommendations for minimum requirements and optional activities will be considered.

Comment 7: "... [I]t would help if Cal/EPA could more specifically identify a meaningful role for the Cal/EPA Advisory Committee for Environmental Justice."

Response 7: The Advisory Committee has played a crucial role in the development of recommendations for Cal/EPA's EJ Strategy; some of those recommendations were incorporated into the EJ Action Plan. With this valuable input, Cal/EPA and its BDOs will move forward within the spirit of those recommendations to develop concrete measures that will address environmental justice issues. Cal/EPA will continue to seek input from the Advisory Committee as we proceed in implementing the EJ Action Plan. We have included a discussion of the Advisory Committee's role in Section 3.5 (page 9) of the October 2004 EJ Action Plan.

3. Comments from the Center for Community Action and Environmental Justice, Communities for a Better Environment, Environmental Health Coalition, People Organizing to Demand Environmental & Economic Rights, and Silicon Valley Toxics Coalition

Comment 1: "The role of the Environmental Justice Advisory Committee is too narrow to have a meaningful impact on the policy process of the Workgroups." "We are very concerned that the role of the Advisory Committee appears limited to the formation of pilot projects, as outlined in Section 3. Notably, the committee will only be convened once per year during implementation of the Action Plan (per Section 5), which will severely limit the amount of input the Committee will have as a group. The members of the Advisory Committee, that invested so much time and effort in developing the Environmental Justice Recommendations, deserve to have, and have the experience to have, a greater role in the Precautionary Approaches Workgroup, Cumulative Impacts Workgroup, and Public Participation Workgroup. Seeking the Committee's input once per year and through standard public workshops, is simply not sufficient. Accordingly, we would suggest that these workgroups include members of the Advisory Committee."

Response 1: We have clarified the role of the Advisory Committee in Section 3.5 of the October 2004 EJ Action Plan. The Advisory Committee will be providing input into each of the five implementation phases, at key decision-making points in our implementation process.

Comment 2: “Advisory Committee and community input to the Workgroups are insufficient.” “The phrase ‘appropriate stakeholder input’ is used in the description of each of the Workgroups, in Sections 2.1, 2.2, and 2.4. Yet nowhere in these sections is the manner or frequency of input opportunities defined. Nor do sections 4 and 5 add much clarity to the issue. As to the general public, Section 4 merely states that public workshops will be conducted regarding the Workgroups’ activities; Section 5 adds only that there will be one set of workshops, in the fall of 2004. As to the Advisory Committee members’ relationship to the Workgroup process, section 4 only provides very generally that ‘Cal/EPA will seek input from the members of the Advisory Committee during implementation of the Action Plan,’ whereas Section 5, as mentioned above, limits the meetings of the Advisory committee to one per year. Thus, if the descriptions in Sections 4 and 5 are the sum total definition of ‘appropriate stakeholder input’ to the Workgroups, this is simply not sufficient. Therefore, in addition to our suggestion in paragraph 1 above, we suggest that the Advisory Committee meet quarterly to discuss and obtain public input upon the policy recommendations from the Workgroups.”

Response 2: We have clarified the role of the Advisory Committee in Section 3.5 of the October 2004 EJ Action Plan. The Advisory Committee will be providing input into each of the five implementation phases, at key decision-making points in our implementation process. Additionally, Section 3.3 discusses tools, including a Stakeholders Forum, to ensure continued public participation and community input into the efforts of BDO staffs.

Comment 3: “For purposes of the pilot projects, too much emphasis is given to ‘risk reduction,’ rather than overall reduction of impacts.” “Risk assessment as science has many shortcomings in predicting actual impacts to public health, especially at the cumulative risk level. For this reason, we are opposed to risk reduction being the sole measure of success of the pilot projects, as is implied with the title of ‘Children’s Environmental Risk Reduction Plan.’ Instead, the pilot projects ‘plans’ should be broad enough to include concepts of reduction of emissions, exposure, and risk, precaution, and cumulative impacts.”

Response 3: Cal/EPA intends for the pilot projects and ChERRPs to address children’s environmental “risk” in the broad sense of the term, which would include factors such as emissions/discharge, exposure, and health risk. Additionally, workshops have been scheduled as part of the implementation of the EJ Action Plan to acquire input from stakeholders regarding the interpretation and scope of the term “cumulative impacts.”

Comment 4: “The role of the Cal/EPA Children’s Environmental Health Center is not well defined, nor is the organization’s connection to environmental justice specified.” “Additionally, the manner [in] which this coordination is to occur is unclear and should be specified.”

Response 4: The Children's Environmental Health Center (CEHC) coordinates Cal/EPA BDOs' activities on children's environmental health issues. The CEHC is part of the Office of the Secretary, operating under the oversight of the Deputy Secretary for Environmental Quality, who also oversees Cal/EPA's EJ efforts. In light of the pilot projects' focus on children's environmental health, it is reasonable to draw upon the scientific expertise of the CEHC and involved BDO staffs in coordinating the development of ChERRPs for the pilot projects. This coordination role is outlined in Section 3.2 of the October 2004 EJ Action Plan.

Comment 5: "Advisory Committee and community input in the selection and development of the Pilot Projects is insufficient." "Section 3 provides that there will be 'meaningful stakeholder input' into developing the EJ pilot projects; however, Section 5 specifies only that in spring 2005, public meetings will be held to solicit input for the EJ pilot projects. A series of public workshops will be insufficient to develop and select pilot projects. Instead, we would suggest that in addition to these public workshops, CalEPA work with the Advisory Committee and existing community-based environmental justice organizations to identify potential projects."

Response 5: We have clarified the role of the Advisory Committee in Section 3.5 of the October 2004 EJ Action Plan. The Advisory Committee will be providing input into each of the five implementation phases, at key decision-making points in our implementation process. Additionally, Section 3.3 discusses tools, including a Stakeholders Forum, to ensure continued public participation and community input into the efforts of BDO staffs, including the development and conduct of pilot projects.

Comment 6: "No mechanism is specified for the development, communication and assessment of policy recommendations from the Pilot Projects." "Section 3 also provides that there will be 'meaningful stakeholder input' in developing 'recommendations for incorporating cumulative impacts methodology and precautionary approaches into environmental decision-making.' However, Section 4 only lists the opportunity for stakeholder and public input into the ChERRPs, and Section 5 specifies only that in spring 2005, public meetings will be held to solicit input for the EJ pilot projects and ChERRPs. Nowhere is Section 4 or 5 is a mechanism specified to give the Advisory Committee or the public the opportunity to make and develop these critical policy recommendations. This role is reserved solely for the IWG, according to Section 5. The policy recommendations that are developed as a result of the Pilot Projects are a critical piece to integrating environmental justice into the work of the Cal/EPA BDOs, and as such, the Advisory Committee and communities hosting the Pilot Projects must have a significant role in developing those recommendations."

Response 6: We have clarified the role of the Advisory Committee in Section 3.5 of the October 2004 EJ Action Plan. The Advisory Committee will be providing input into each of the five implementation phases, at key decision-making points in our implementation process. Additionally, Section 3.3 discusses Cal/EPA's commitment to conducting workshops throughout the implementation process, establishing Local Advisory Groups (LAGs) for the pilot projects, and utilizing a Stakeholders Forum to ensure continued public participation and community input into the efforts of BDO staffs.

Comment 7: “Leads for each of the pilot projects should not necessarily be Advisory Committee members, be should instead based in the communities in which the pilot projects take place.” “Finally, leads or co-leads for each of the pilot project teams must come from the communities where the projects are located. This may or may not be an Advisory Committee member. It is imperative that these projects be community-based and community-driven, and as such, the LAGs must have a community co-lead.”

Response 7: We agree that the LAGs and pilot projects should be community-based.

4. Comments from People for Children’s Health & Environmental Justice

Comment 1: “I am recommending the community, Midway Village located in Daly City, California be selected for the Northern California project, as one of the 3 pilot projects under the Conduct Cumulative Health Impacts Reduction Plan (CHIRP) under the EJ Action Plan 2004.”

Response 1: Selection of the pilot project location and development of pilot project parameters will be the focus of Phase 1 in Cal/EPA’s implementation of the EJ Action Plan. We will consider your proposal as part of that process, to be initiated through public workshops in October and November 2004, with draft recommendations expected to be released for public comments in December 2004, and presented in January 2005 to the IWG for consideration, with input from the Advisory Committee.

5. Comments from Western Plant Health Association

Comment 1: “We agree that the availability and cost effectiveness of approaches to communities must be taken into consideration when developing mitigation approaches. However, reasonable and cost-effective is not well defined. We recommend that the workgroup charged with developing this process utilize an agreed to cost/benefit type analysis. Interested groups will then have a clearer understanding of the impact of EJ programs both from an environmental and economic basis.”

Response 1: We agree that it is important to have a common understanding of key concepts such as cost effectiveness. However, development of mitigation approaches is not expected to be conducted until Phase 3 (projected to be in late-2005) in Cal/EPA’s implementation process. At that time, staff will solicit stakeholder input on and consider the appropriate tools to assess the cost effectiveness of various measures and approaches.

Comment 2: “We agree that standard risk assessment protocols should be utilized to accurately access the impact of cumulative impacts. In addition to the inclusion of the use of risk assessment to determine cumulative impact, that language is included that states that only science that has been demonstrated to be accurate for end points within each media area be utilized. It would be a disservice if data that has not been proven to be accurate, (*i.e.*, the use of default numbers) be utilized by communities who are relying on this information to make sound judgments. We also urge inclusion of language that as the benefits of this information will be utilized and enjoyed by all Californian’s, it should be funded through state sources generated by all Californian’s.”

Response 2: Cal/EPA acknowledges your concerns and agrees that our efforts on cumulative impacts should be conducted with a strong scientific foundation. Cal/EPA will proceed methodically and thoughtfully on this matter. We are confident that the staff involved will not only recognize the complexity of the cumulative impacts issue, but will strive to develop an effective, reasonable, and equitable work product. It should be noted that the EJ Action Plan is the mechanism by which Cal/EPA will explore complex, relatively undefined concepts (such as cumulative impacts) over the period of several years. At this time, we do not want to limit this effort to only the consideration of protocols or tools that currently exist. While a strong scientific basis for decision-making is important, we also believe that uncertainty is an inevitable component of any risk assessment, making it difficult to require the standard of “proven to be accurate” for data used in risk management decisions.

Comment 3: “We recommend clear language be included that mandates the use of sound science and peer reviewed risk assessment during the assessments [in pilot projects aimed at assessing children’s health]. We also recommend the guidelines for these pilot projects include language incorporating the use of ‘available and cost effective technologies and processes’ when making recommendations for reduction strategies.”

Response 3: Should a pilot project include proposed rulemaking by a Cal/EPA BDO, the scientific basis for that rulemaking will be subject to the external scientific peer review requirements of the California Health and Safety Code, Section 57004(b). It is our intention that cost effective approaches and mitigation strategies be identified for each pilot projects, and that recommendations be feasible both technically and on the basis of cost. Language expressing that intent is included in Section 3 of the EJ Action Plan.